

Mr. David McKillip
Environmental Fees Unit

May 14, 1990

Janet Vining
Legal

Generator Fee -- Used Oil Generated by Ship Repair Work and
Removal from Vessels

This is in response to your memorandum of February 15, 1990, in which you request information concerning the applicability of the generator fee imposed by Section 25205.5 of the Health and Safety Code to used oil removed from vessels. I will only address the issues raised concerning C.

The question of who the generator is in the matter will be dealt with separately in a letter to DOHS.

is seeking a refund of the 1989 generator fee it paid. In its generator fee return, Continental included used oil removed from vessels during repair work and recycled.

argues that the used oil is exempt from the disposal fee and generator fee provisions by virtue of Section 25250.24 of the Health and Safety Code.

Health and Safety Code Section 25250.1(a)(3) states:

"Used oil" means any of the following:

...

(3) Spent lubricating fluids which have been removed from an engine crankcase, transmission, gearbox, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine....

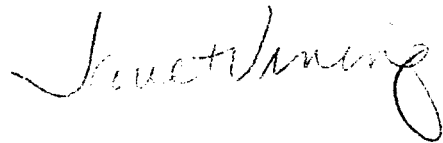
Health and Safety Code Section 25250.24(b) states:

Used oil which is removed from a motor vehicle and which is subsequently recycled, by a recycler who is permitted pursuant to this

article, shall not be included in the calculation of the amount of hazardous waste generated for purposes of the generator fee imposed pursuant to Section 25205.5.

On January 24, 1989, _____ wrote to the Department of Health Services, seeking an opinion concerning the application of the above-cited sections of the Health and Safety Code to the recycling of waste oil from the bilges of ships. On April 28, 1989, Dave Willis, Deputy Director of the Toxic Substances Control Division, wrote to _____, stating DOHS's position that "at least for the purposes of this statute, a ship can be considered a 'motor vehicle'". Willis reasoned that, although the Legislature's specific intent was to exempt generators of used automobile oil "for reasons particular to that group", the goal of the exemption is to encourage recycling, and providing the same incentive to "another group" is both equitable and consistent with this goal. Willis also noted that the definition of "motor vehicle" in Section 415 of the California Vehicle Code and in related regulations neither includes nor excludes vessels which move upon water.

Since the Department of Health Services has determined that, at least for purposes of applying Health and Safety Code Section 25250.24(b), vessels are motor vehicles, used oil removed from a vessel should not be included in the measure of the generator fee if the used oil meets the definition contained in Section 25250.1(a)(3) and is recycled. Furthermore, since the used oil is recycled, it is not subject to a disposal fee.



JV:wak
2186C

cc: Mr. E. V. Anderson
Mr. Robert M. Frank
Mr. Gary J. Jugum
Mr. Donald J. Hennessy
Mr. Gordon Adelman

bc: Ms. Cynthia Spencer-Ayres